

BEFORE THE BOARD OF LAND COMMISSIONERS

IN THE MATTER OF CONFLICTING)	
LEASE APPLICATION BY)	STATE LEASE NO. 3-8742
BUMMER RANCH LIMITED PARTNERSHIP)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER DENYING THE PARTIES CROSS MOTIONS FOR SUMMARY JUDGMENT
AND RETURNING THIS MATTER TO THE OFFICE OF STATE LANDS AND
INVESTMENTS**

The matter came before the Board of Land Commissioners during its public meeting on April 9, 2020, following receipt of the Office of Administrative Hearings' recommended decision in this case. The Office of Administrative Hearings presided over the contested-case portion of this matter and issued a recommended decision on January 23, 2020.

In this case, Bummer Ranch Limited Partnership (Bummer Ranch) was the unsuccessful bidder for Lease No. 3-8742. Bummer Ranch appealed the Office of State Lands and Investments' (OSLI) conditional award of the lease to the successful bidder and the matter was referred to the Office of Administrative Hearings (OAH) for hearing.

OSLI and Bummer Ranch filed cross-motions for summary judgment, each contending there are no issues of material fact to be determined and that they were entitled to judgment as a matter of law. OSLI filed its Motion for Summary Judgment and supporting briefing September 4, 2019, including Exhibits A–F (referred to as OSLI Ex. A–F). Bummer Ranch filed its Opposition to the Motion for Summary Judgment and a Cross-Motion for Summary Judgment on September 24, 2019, including Exhibits A–F (referred to as Bummer Ex. A–F).

On October 23, 2019, the Hearing Examiner granted Bummer Ranch's motion for additional time to conduct discovery and to supplement its summary judgment briefing.

Accordingly, on November 26, 2019, Bummer Ranch filed its Supplemental Opposition to the Motion for Summary Judgment and Cross-Motion for Summary Judgment, including Exhibit A (referred to as Supp. Bummer Ex. A). OSLI responded on December 10, 2019.

The parties agreed and stipulated that there were no genuine issues of material fact and that a contested case evidentiary hearing was not needed. Based upon the evidence and arguments presented, which the Board has reviewed, the Board makes the following findings of fact, conclusions of law, and order:

I. JURISDICTION

The State Board of Land Commissioners' (Board) Rules require a contested case hearing upon a timely appeal of conflicting applications to lease lands of the Board. Board of Land Commissioners Rules, Ch. 1, § 7. The State of Wyoming owns the lands covered by State Lease No. 3-8742, and those lands are subject to the Board's jurisdiction. In April 2019, Bummer Ranch and Sunrise R. Cattle Company, LLC (Sunrise) submitted conflicting applications to lease the land covered by State Lease No. 3-8742. On May 10, 2019, the lease was conditionally awarded to Sunrise. Bummer Ranch timely requested a contested case hearing following the issuance of the conditional award.

As provided in the Board's rules, on June 5, 2019, OSLI referred this matter to the Office of Administrative Hearings (OAH) to conduct contested case proceedings. Board of Land Commissioners Rules, Ch. 1, § 9. OAH is authorized to provide hearing services to other state agencies. The hearings are to be "conducted in an impartial manner pursuant to the Wyoming Administrative Procedure Act, applicable provisions of the Wyoming Rules of Civil Procedure and any rules for the conduct of contested cases adopted by the director of the Office of Administrative Hearings." Wyo. Stat. Ann. § 9-2-2202(b)(iii). Likewise, the Board's Rules

incorporate Chapter 2 of the Office of Administrative Hearings, General Agency Rules. Board of Land Commissioners Rules, Ch. 1 § 10. The OAH Rules incorporate and adopt Rule 56 of the Wyoming Rules of Civil Procedure, which provides for summary judgment.

Therefore, OAH had jurisdiction to conduct the contested case proceedings and consider summary judgment and the Board has jurisdiction to issue a final order in this matter.

II. STATEMENT OF THE CASE

OSLI advertised a parcel of vacant state land covered by Lease No. 3-8742 as available for lease and requested bids for Lease. The minimum annual rental for the lease was \$1,538.82. Both Bummer Ranch and Sunrise submitted bids for State Lands Lease No. 3-8742. Bummer Ranch's bid was for the minimum annual rental amount, and Sunrise's bid was for \$1,550.00. Bummer Ranch indicated it owned and controlled land adjoining the lands covered by Lease No. 3-8742, and Sunrise's bid indicated they did not own or control land adjoining the lands covered by Lease No. 3-8742. The lease was conditionally awarded to Sunrise because its bid was for a higher amount. Bummer Ranch objected, contending the Office of State Lands failed to properly apply the preference for adjoining landowners under Wyoming Statute § 36-5-105(b).

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether, as a matter of law, OSLI properly awarded Lease No. 3-8742 to Sunrise and not to Bummer Ranch. Specifically, the parties dispute the proper application of the preference for adjoining landowners provided by Wyoming Statute § 36-5-105(b).

IV. FINDINGS OF FACT

1. The parties, through their respective summary judgment briefing, agree the facts are not contested and agree to the following:

a. The State of Wyoming owns the lands covered by State Lease No. 3-8742. [OSLI Ex. A]

b. On April 3, 2019, the State Lands Office advertised a bid solicitation for Lease No. 3-8742 for a minimum annual rental of \$1,538.82. [OSLI Ex. A]

c. On April 17, 2019, Bummer Ranch submitted a bid for Lease No. 3-8742. [OSLI Ex. B] Bummer Ranch's bid was for the minimum annual rental amount. Bummer Ranch further indicated it owned and controlled land adjoining the lands covered by Lease No. 3-8742. [OSLI Ex. B; Bummer Ex. A]

d. On April 25, 2019, Sunrise submitted a bid for Lease No. 3-8742 for \$1,550.00. [OSLI Ex. C] Sunrise indicated it did not own and control land adjoining the lands covered by Lease No. 3-8742. [OSLI Ex. C]

e. On May 10, 2019, the Office of State Lands Director issued a Director's Decision conditionally awarding Lease No. 3-8742 to Sunrise "based on the highest rental offer received." [OSLI Ex. D]

f. OSLI has historically interpreted the preference in Wyo. Stat. Ann. § 36-5-105(b) as a tiebreaker between two otherwise similar bids for vacant land. [OSLI Ex. A; Supp. Bummer Ex. A]

2. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

V. CONCLUSIONS OF LAW

A. Principles of Law

(i) General and Summary Judgment Principles

3. The agency making the decision at a contested case hearing shall determine all relevant factual and legal issues between the parties. *JM v. Dep't of Family Servs.*, 922 P.2d 219 (Wyo. 1996).

4. Regarding summary judgment, the Wyoming Supreme Court has said:

We hold summary judgment is available in contested case hearings before the Office of Hearing Examiners [Office of Administrative Hearings]. It should be invoked when, in the language of Wyo.R.Civ.P. 56(c), “[t]here is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”

Neal v. Caballo Rojo, Inc., 899 P.2d 56, 62 (Wyo. 1995).

5. Wyoming Rule of Civil Procedure 56(c) provides:

(c) *Procedures.* —

(1) *Supporting Factual Positions.* — A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

- (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* — A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* — The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* — An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and

show that the affiant or declarant is competent to testify on the matters stated.

6. Rule 56.1 of the Wyoming Rules of Civil Procedure provides as follows:

(a) Upon any motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, in addition to the materials supporting the motion, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In addition to the materials opposing a motion for summary judgment, there shall be annexed a separate, short and concise statement of material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Such statements shall include pinpoint citations to the specific portions of the record and materials relied upon in support of the parties' position.

7. When reviewing a motion for summary judgment, the decision maker must review the record from the vantage point most favorable to the non-movant and give the non-movant the benefit of all favorable inferences in determining whether there are genuine issues of material fact. *Worker's Comp. Claim of Bodily*, 2011 WY 149, ¶¶ 12 and 16, 265 P.3d 995, 998 and 1000 (Wyo. 2011).

(ii) State Lands Leasing Principles

8. The Board consists of the Governor, the Secretary of State, the State Treasurer, the State Auditor, and the State Superintendent of Public Instruction. Pursuant to the State Lands Act, the Board has jurisdiction over "the direction, control, leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature." Wyo. Stat. Ann. § 36-2-101.

9. State Lands Act describe those who are qualified to lease state land under the jurisdiction of the Board as follows:

(a) No person shall be qualified to lease state lands unless that person has reached the age of majority, and is a citizen of the United States, or has declared an intention to become a citizen of the United States. No person or legal entity shall be qualified to lease state lands unless he or it has complied with the laws of this state and is authorized to transact business in this state.

Wyo. Stat. Ann. § 36-5-101(a). In addition, the statutes specify the basic process for obtaining a grazing lease and renewing an outstanding lease of state lands under the Board's jurisdiction.

Wyo. Stat. Ann. §§ 36-5-103 and -104.

10. The statutes expressly provide preferences for the leasing of state lands under the jurisdiction of the Board. Specifically, the statutes provide:

(a) All state lands leased by the state board of land commissioners, for grazing and other agricultural purposes shall be leased in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries.

(b) In leasing vacant lands, preference shall in all cases be given to applicants who are bona fide resident citizens of the state qualified under the provisions of W.S. 36-5-101, and to persons or legal entities authorized to transact business in the state, having actual and necessary use for the land and who are the owners, lessees or lawful occupants of adjoining lands, who offer to pay an annual rental at not less than fair market value, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the use of the forage or other commodity available annually on the land for a period of ten (10) years.

Wyo. Stat. Ann. § 36-5-105(a) and (b).

(iii) Statutory Interpretation Principles

11. When interpreting a statute, a court seeks to discern the legislature's intent as reflected in the language of the statute. *Vance v. City of Laramie*, 2016 WY 106, ¶ 12, 382 P.3d 1104, 1106 (Wyo. 2016). To discern legislative intent, the Court first must determine whether the statute is clear or ambiguous. *Sinclair Oil Corp. v. Wyo. Dep't of Revenue*, 2010 WY 122, ¶ 7, 238 P.3d 568, 570 (Wyo. 2010). "[A] statute is ambiguous if it is found to be vague or uncertain

and subject to varying interpretations.” *N. Laramie Range Found. v. Converse Cnty. Bd. of Cnty. Comm’rs*, 2012 WY 158, ¶ 37, 290 P.3d 1063, 1077 (Wyo. 2012).

We look first to the plain and ordinary meaning of the words to determine if the statute is ambiguous. A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability. Conversely, a statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations.

RME Petroleum Co. v. Wyo. Dep’t of Revenue, 2007 WY 16, ¶ 25, 150 P.3d 673, 683 (Wyo. 2007)

12. “The fact that the parties have differing opinions on the statute’s meaning is not conclusive as to ambiguity.” *Wyodak Res. Dev. Corp., v. Wyo. Dep’t of Revenue*, 2017 WY 6, ¶ 25, 387 P.3d 725, 732 (Wyo. 2017) (citations omitted). “If the statutory language is sufficiently clear and unambiguous, the Court simply applies the words according to their ordinary and obvious meaning.” Effect is given to each word, clause, and sentence chosen by the legislature, and each word, clause, and sentence are construed *in pari materia*. “A statute is not interpreted in a way that renders a portion of it meaningless or adds language to it.” *Id.*, ¶ 26, 732.

13. Only when a statute is determined to be ambiguous may a court resort to rules of statutory construction to discern the Legislature’s intent. *Id.*, ¶ 27, 732. When a statute is ambiguous the court looks to the mischief the statute was intended to cure, the historical setting surrounding the enactment of the statute, public policy of the state, and to the rules of statutory construction. *Chevron v. Dept. of Revenue*, 2007 WY 43 ¶ 15, 154 P.3d 331, 335 (Wyo. 2007).

14. “[A]n agency’s interpretation of the statutory language which the agency normally implements is entitled to deference, unless clearly erroneous.” *Wyo. Dep’t of Rev. v. Exxon Mobil Corp.*, 2007 WY 112, ¶ 31, 162 P.3d 515, 526 (Wyo. 2007).

B. Application of Principles of Law

15. There are no genuine issues of material fact in this case. Neither party argued there were questions of fact to be determined.

16. Both of the bidders timely and properly submitted bids in accordance with the bid advertisement. Both of the bidders are qualified to lease State Board lands and offered rent amounts equal to or more than the minimum annual rent set by the State Board. Bummer Ranch's bid was for the minimum annual rental amount of \$1,538.82, and Sunrise's bid was for \$1,550.00, a difference of \$11.18. Bummer Ranch owns and controls land adjoining the lands covered by Lease No. 3-8742, Sunrise does not own or control any land adjoining the lands covered by Lease No. 3-8742. OSLI awarded the lease to Sunrise because their bid was the highest rental offer received.

17. However, neither party is entitled to judgment as a matter of law. Wyoming Statute § 36-5-105(b) is subject to varying interpretations. The term "preference" is not expressly defined in the state lands statutes or anywhere in the statutes and there is no express explanation as to how any of the "preference" factors in Wyo. Stat. Ann. § 36-5-105(b) including the adjoining landowner, lessee, lawful occupant "preference" should operate or be applied. There is likewise no clear case law specifically interpreting these provisions.

18. While OSLI's interpretation of Wyo. Stat. Ann. § 36-5-105 as a whole is a logical interpretation, it is not the only interpretation. As noted, the statute is silent regarding how the preference is to be implemented or the weight to be given the various "preference" factors listed in Wyo. Stat. Ann. § 36-5-105(b). It is also silent as to how those factors relate to Wyo. Stat. Ann. § 36-5-105(a)'s requirement that "all state lands leased by the state board of land

commissioners, for grazing ... shall be leased in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries.”

19. Bummer Ranch’s legal argument likewise does not account for the lack of statutory language specifying the weight to be given the various “preference” factors listed in Wyo. Stat. Ann. § 36-5-105(b) or how those factors relate to Wyo. Stat. Ann. § 36-5-105(a)’s requirement that “all state lands leased by the state board of land commissioners, for grazing ... shall be leased in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries.”

20. Bummer Ranch appears to argue that OSLI must favor an applicant having one of the “preference” factors found in § 36-5-105(b) over all others (including higher bidders) and award the lease to the preferred applicant simply because the applicant owns neighboring land. If that interpretation were correct, vacant land lessees would not even be required to meet a higher bid offer and would enjoy a tremendous preference. Under that interpretation, the vacant land preference would be even greater than the preferential right to renew by meeting the highest bid extended to existing lessees under Wyo. Stat. Ann. § 36-5-105(c).

21. However, the statute does not dictate the quality of the preference to be given. It only states:

In leasing vacant lands, **preference shall in all cases be given** to applicants who are bona fide resident citizens of the state qualified under the provisions of W.S. 36-5-101, and to persons or legal entities authorized to transact business in the state, having actual and necessary use for the land and who are the owners, lessees or lawful occupants of adjoining lands, who offer to pay an annual rental at not less than fair market value, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the use of the forage or other commodity available annually on the land for a period of ten (10) years.

(Emphasis added)

22. Although an agency's interpretation of the statutory language which the agency normally implements is entitled to deference, the Board has not adopted rules interpreting this provision or specifying how it would implement the preference in awarding the lease of vacant land. The Board has general rulemaking authority to "promulgate and adopt rules and regulations not inconsistent with the laws of the state, as it may from time to time deem necessary in the direction, control, disposition and care of all state lands, and to preserve the value of the land and to recognize the fiduciary duties of the state land office." Wyo. Stat. Ann. § 36-2-107.

23. The Wyoming Supreme Court has found that in the absence of appropriate criteria or factors adopted by administrative rulemaking, decisions made on an ad hoc basis are inherently arbitrary and capricious. *Rissler & McMurray Co. v. Environmental Quality Council*, 856 P.2d 450 (Wyo. 1993). In this instance, because the term "preference" is not expressly defined in the state lands statutes or anywhere in the statutes and there is no express explanation as to how the "preference" should operate or be applied, without a rule, the decisions of the Board in awarding vacant leases would lend themselves to arbitrary and capricious decision-making.

24. When a legislative mandate is broad the "administrative agency must invoke its expertise to create standards, which will furnish notice to the public of how the decision may be reached." *Id.* at 454. The creation of such standards serves to eliminate the need to develop standards on a case by case basis which may lead to inconsistent results. *Id.* at 454.

25. With regard to leasing vacant land there is not one plain meaning of the statute, nor is there direction of how to weigh and implement the various preference factors listed in the statute. Accordingly, it is appropriate for the Board to interpret and implement the provisions of

Wyo. Stat. Ann. § 36-5-105 pursuant to its rulemaking power and its power to direct, control, and care for all state land and to preserve the value of the land and recognize its fiduciary duties.

VI. ORDER

IT IS THEREFORE ORDERED that:

1. OSLI's Motion for Summary Judgment is **Denied**.
2. Bummer Ranch's Motion for Summary Judgment is **Denied**.
3. This case is returned to the OSLI to restart the vacant land leasing process for Lease No. 3-8742 after the Board has adopted rules related to leasing vacant land.

Executed this 13th day of April, 2020.



Mark Gordon, President
Board of Land Commissioners

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE OFFICE OF STATE LANDS AND INVESTMENTS
FOR THE BOARD OF LAND COMMISSIONERS

ST LAND & INVESTMENTS
20 JAN 24 4:10:16

IN THE MATTER OF CONFLICTING)
LEASE APPLICATION BY) OAH DOCKET NO. 19-076-060
BUMMER RANCH LIMITED PARTNERSHIP) STATE LEASE NO. 3-8742

**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER GRANTING OFFICE OF STATE LANDS AND INVESTMENTS' MOTION
FOR SUMMARY JUDGMENT *NUNC PRO TUNC***

This Recommended Findings of Fact, Conclusions of Law and Order Granting Office of State Lands and Investments' Motion for Summary Judgment *Nunc Pro Tunc* corrects the prior Recommended Findings of Fact, Conclusions of Law and Order Granting Office of State Lands and Investments' Motion for Summary Judgment entered by the Office of Administrative Hearings on January 16, 2020. The Successful Lease Bidder's name was incorrectly stated and is hereby corrected to Sunrise R. Cattle Company, LLC. The full text of the order shall be as follows:

In this case, Bummer Ranch Limited Partnership (Bummer Ranch) was the unsuccessful bidder for Lease No. 3-8742. Bummer Ranch appealed the Office of State Lands and Investments' (Office of State Lands or OSL) conditional award of the lease to the successful bidder and the matter was referred to the Office of Administrative Hearings (Office) for hearing.

The State Lands Office and Bummer Ranch have filed cross-motions for summary judgment, each contending there are no issues of fact to be determined at hearing and that this Hearing Examiner may recommend summary judgment be granted. The Office of State Lands filed its Motion for Summary Judgment and supporting briefing September 4, 2019, including Exhibits A-F (referred to as OSL Ex. A-F). Bummer Ranch filed its Opposition to the Motion

for Summary Judgment and a Cross-Motion for Summary Judgment on September 24, 2019, including Exhibits A–F (referred to as Bummer Ex. A–F).

On October 23, 2019, this Hearing Examiner granted Bummer Ranch’s motion for additional time to conduct discovery and to supplement its summary judgment briefing. Accordingly, on November 26, 2019, Bummer Ranch filed its Supplemental Opposition to the Motion for Summary Judgment and Cross-Motion for Summary Judgment, including Exhibit A (referred to as Supp. Bummer Ex. A) and the Office of State Lands responded on December 10, 2019.

The parties agreed and stipulated that there were no genuine issues of material fact and that a contested case evidentiary hearing was not needed. Based upon the evidence and arguments presented, this Hearing Examiner makes the following recommended findings of fact, conclusions of law, and order:

I. JURISDICTION

This Office is authorized to provide hearing services to other state agencies. The hearings are to be “conducted in an impartial manner pursuant to the Wyoming Administrative Procedure Act, applicable provisions of the Wyoming Rules of Civil Procedure and any rules for the conduct of contested cases adopted by the director of the Office of Administrative Hearings.” Wyo. Stat. Ann. § 9-2-2202(b)(iii) (LexisNexis).

The State Board of Land Commissioners’ (Board) Rules (Board Rules) require a contested case hearing upon a timely appeal of conflicting applications to lease lands of the Board. Board Rules, Ch. 1, § 7, 060.0002.1.05162017. In addition, the Board Rules incorporate the Office of Administrative Hearings, General Agency Rules, (OAH Rules), Chapter 2,

270.0001.2.07202017. The OAH Rules incorporate and adopt Rule 56 of the Wyoming Rules of Civil Procedure, which provides for summary judgment. Board Rules, ch. 1, § 10.

The State of Wyoming owns the lands covered by State Lease No. 3-8742, and those lands are subject to the Board's jurisdiction. In April 2019, Bummer Ranch and Sunrise R. Cattle Company, LLC (Sunrise) submitted conflicting applications to lease the land covered by State Lease No. 3-8742 from the Board. On May 10, 2019, the lease was conditionally awarded to Sunrise. Bummer Ranch timely requested a contested case hearing following the issuance of the conditional award. On June 5, 2019, the State Lands Office referred this matter to this Office of Administrative Hearings (Office) to conduct contested case proceedings. Therefore, this Office has jurisdiction to conduct the contested case proceedings and recommend a decision in this matter.

II. STATEMENT OF THE CASE

The State Lands Office advertised a bid solicitation for Lease No. 3-8742, with a minimum annual rental of \$1,538.82. Both Bummer Ranch and Sunrise submitted bids for State Lands Lease No. 3-8742. Bummer Ranch's bid was for the minimum annual rental amount, and Sunrise R Cattle Company, LLC's (Sunrise) bid was for \$1,550.00. Bummer Ranch indicated it owned and controlled land adjoining the lands covered by Lease No. 3-8742, and Sunrise's bid indicated they did not own or control land adjoining to the lands covered by Lease No. 3-8742. The lease was awarded to Sunrise because its bid was for a higher amount. Bummer Ranch objected, contending the Office of State Lands failed to properly apply the preference for adjoining landowners under Wyoming Statute § 36-5-105(b) (LexisNexis).

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether, as a matter of law, the Office of State Lands properly awarded the Lease No. 3-8742 to Sunrise and not to Bummer Ranch. Specifically, the parties dispute the proper application of the preference for adjoining landowners provided by Wyoming Statute § 36-5-105(b) (LexisNexis).

IV. RECOMMENDED FINDINGS OF FACT

1. The parties, through their respective summary judgment briefing, agree the facts are not contested and agree to the following:

a. The State of Wyoming owns the lands covered by State Lease No. 3-8742. [OSL Ex. A]

b. On April 3, 2019, the State Lands Office advertised a bid solicitation for Lease No. 3-8742 for a minimum annual rental of \$1,538.82. [OSL Ex. A]

c. On April 17, 2019, Bummer Ranch submitted a bid for Lease No. 3-8742. [OSL Ex. B] Bummer Ranch's bid was for the minimum annual rental amount. Bummer Ranch further indicated it owned and controlled land adjoining the lands covered by Lease No. 3-8742. [OSL Ex. B; Bummer Ex. A]

d. On April 25, 2019, Sunrise submitted a bid for Lease No. 3-8742 for \$1,550.00. [OSL Ex. C] Sunrise indicated it did not own and control land adjoining the lands covered by Lease No. 3-8742. [OSL Ex. C]

e. On May 10, 2019, the Office of State Lands Director issued a Director's Decision conditionally awarding Lease No. 3-8742 to Sunrise "based on the highest rental offer received." [OSL Ex. D]

f. The Office of State Lands has consistently and continuously applied Wyoming Statute § 36-5-105(b) in such a way that the preference for adjoining lands applies only in cases where there are two otherwise similar bids for vacant land. [OSL Ex. A; Supp. Bummer Ex. A]

2. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

V. RECOMMENDED CONCLUSIONS OF LAW

A. Principles of Law

(i) General and Summary Judgment Principles

3. The familiar judicial review standard set forth in Wyoming Statute § 16-3-114(c), which requires courts to review final agency actions for an abuse of discretion, findings not supported by substantial evidence, conclusions not in accordance with law or in excess of statutory jurisdiction, and for arbitrary and capricious actions, *is not* the standard applied in a contested case hearing. Instead, the agency making the decision at a contested case hearing shall determine all relevant factual and legal issues between the parties. *JM v. Dep't of Family Servs.*, 922 P.2d 219 (Wyo. 1996).

4. Regarding summary judgment, the Wyoming Supreme Court has said:

We hold summary judgment is available in contested case hearings before the Office of Hearing Examiners [Office of Administrative Hearings]. It should be invoked when, in the language of Wyo.R.Civ.P. 56(c), “[t]here is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”

Neal v. Caballo Rojo, Inc., 899 P.2d 56, 62 (Wyo. 1995).

5. Wyoming Rule of Civil Procedure 56(c) provides:

(c) *Procedures.* —

(1) *Supporting Factual Positions*. — A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence*. — A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited*. — The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations*. — An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

6. Rule 56.1 of the Wyoming Rules of Civil Procedure provides as follows:

(a) Upon any motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, in addition to the materials supporting the motion, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In addition to the materials opposing a motion for summary judgment, there shall be annexed a separate, short and concise statement of material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Such statements shall include pinpoint citations to the specific portions of the record and materials relied upon in support of the parties' position.

7. When reviewing a motion for summary judgment, the Hearing Examiner must review the record from the vantage point most favorable to the non-movant and give the non-movant the benefit of all favorable inferences in determining whether there are genuine issues of material fact. *Worker's Comp. Claim of Bodily*, 2011 WY 149, ¶¶ 12 and 16, 265 P.3d 995, 998 and 1000 (Wyo. 2011).

(ii) State Lands Leasing Principles

8. The Board consists of the Governor, the Secretary of State, the State Treasurer, the State Auditor, and the State Superintendent of Public Instruction. Pursuant to the State Lands Act, the Board has jurisdiction over “the direction, control, leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature.” Wyo. Stat. Ann. § 36-2-101 (Lexis Nexis)

9. The State Lands Act describes those who are qualified to lease state land under the jurisdiction of the Board as follows:

(a) No person shall be qualified to lease state lands unless that person has reached the age of majority, and is a citizen of the United States, or has declared an intention to become a citizen of the United States. No person or legal entity shall be qualified to lease state lands unless he or it has complied with the laws of this state and is authorized to transact business in this state.

Wyo. Stat. Ann. § 36-5-101(a) (LexisNexis). In addition the State Lands Act specifies the basic process for obtaining a grazing lease and renewing an outstanding lease of state lands under the Board’s jurisdiction. Wyo. Stat. Ann. §§ 36-5-103 and 104 (LexisNexis).

10. The State Lands Act expressly provides preferences for the leasing of state lands under the jurisdiction of the Board. Specifically, the State Lands Act provides:

(a) All state lands leased by the state board of land commissioners, for grazing and other agricultural purposes shall be leased in such manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries.

(b) In leasing vacant lands, preference shall in all cases be given to applicants who are bona fide resident citizens of the state qualified under the provisions of W.S. 36-5-101, and to persons or legal entities authorized to transact business in the state, having actual and necessary

use for the land and who are the owners, lessees or lawful occupants of adjoining lands, who offer to pay an annual rental at not less than fair market value, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the use of the forage or other commodity available annually on the land for a period of ten (10) years.

Wyo. Stat. Ann. § 36-5-105(a) and (b) (LexisNexis)

(iii) Statutory Interpretation Principles

11. When interpreting a statute, the Court seeks to discern the legislature's intent as reflected in the language of the statute. *Vance v. City of Laramie*, 2016 WY 106, ¶ 12, 382 P.3d 1104, 1106 (Wyo. 2016). To discern legislative intent, the Court first must determine whether the statute is clear or ambiguous. *Sinclair Oil Corp. v. Wyo. Dep't of Revenue*, 2010 WY 122, ¶ 7, 238 P.3d 568, 570 (Wyo. 2010). "[A] statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations." *N. Laramie Range Found. v. Converse Cnty. Bd. of Cnty. Comm'rs*, 2012 WY 158, ¶ 37, 290 P.3d 1063, 1077 (Wyo. 2012).

We look first to the plain and ordinary meaning of the words to determine if the statute is ambiguous. A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability. Conversely, a statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations.

RME Petroleum Co. v. Wyo. Dep't of Revenue, 2007 WY 16, ¶ 25, 150 P.3d 673, 683 (Wyo. 2007)

12. "The fact that the parties have differing opinions on the statute's meaning is not conclusive as to ambiguity." *Wyodak Res. Dev. Corp., v. Wyo. Dep't of Revenue*, 2017 WY 6, ¶ 25, 387 P.3d 725, 732 (Wyo. 2017) (citations omitted). "If the statutory language is sufficiently clear and unambiguous, the Court simply applies the words according to their ordinary and obvious meaning." Effect is given to each word, clause, and sentence chosen by the legislature,

and each word, clause, and sentence are construed *in pari materia*. “A statute is not interpreted in a way that renders a portion of it meaningless or adds language to it.” *Id.*, ¶ 26, 732.

13. Only when a statute is determined to be ambiguous may a court resort to rules of statutory construction to discern the Legislature’s intent. *Id.*, ¶ 27, 732. When a statute is ambiguous the court looks to the mischief the statute was intended to cure, the historical setting surrounding the enactment of the statute, public policy of the state, and to the rules of statutory construction. *Chevron v. Dept. of Revenue*, 2007 WY 43 ¶ 15, 154 P.3d 331, 335 (Wyo. 2007).

14. “[A]n agency’s interpretation of the statutory language which the agency normally implements is entitled to deference, unless clearly erroneous.” *Wyo. Dep’t of Rev. v. Exxon Mobil Corp.*, 2007 WY 112, ¶ 31, 162 P.3d 515, 526 (Wyo. 2007).

B. Application of Principles of Law

15. There are no genuine issues of material fact in this case and judgment as a matter of law is appropriate. Neither party argued there were questions of fact.

16. Both of the bidders timely and properly submitted bids in accordance with the bid advertisement. Both of the bidders are qualified to lease State Board lands and offered rent amounts equal to or more than the minimum annual rent set by the State Board. Bummer Ranch’s bid was for the minimum annual rental amount of \$1,538.82, and Sunrise’s bid was for \$1,550.00, a difference of \$11.18. Bummer Ranch owns and controls land adjoining the lands covered by Lease No. 3-8742, Sunrise does not own or control any land adjoining the lands covered by Lease No. 3-8742. The Office of State Lands Board Director awarded the lease to Sunrise because their bid was the highest rental offer received.

17. The Office of State Lands argues the decision to award the lease to Sunrise was in accordance with law. Specifically, the State Lands Office asserts the statutory preference

provided to an applicant who owns or controls adjoining land applies only if all of the competing bids are otherwise the same and are for the same amount of rent. Bummer Ranch argues the preference is mandatory and Bummer Ranch should have been conditionally awarded the lease.

18. Subpart (a) of the statute requires the Office of State Lands to lease state land to the greatest benefit of state land trustees. Subpart (b) of the statute requires the Office of State Lands to give preference to certain applicants—including those with adjoining lands such as Bummer—but does not state when the preference applies other than “shall in all cases[.]” *See* Wyo. Stat. Ann. § 36-5-105(b) (LexisNexis).

19. The parties differ here: The Office of State Lands’ position is that its statutory and fiduciary obligation to derive the greatest benefit from state lands requires it to award competing leases to the highest bidder. Thus the Office of State Lands applies the preference statute in cases where there are similar—defined as equal—bids. Bummer Ranch’s position is that the two bids—separated only by \$11.18—were sufficiently similar such that the subpart (b) preference should have applied, resulting in Bummer Ranch’s successful bid.

20. The language of Wyoming Statute § 36-5-105(b), which provides a “preference” to the owners, lessees, or lawful occupants of adjoining lands is ambiguous. The term “preference” is not expressly defined in the State Lands Act or anywhere in the statutes and there is no express explanation as how the adjoining landowner, lessee, lawful occupant “preference” should operate or be applied.

21. The Office of State Lands’ historic interpretation of Wyoming Statute § 36-5-105(b) (LexisNexis) is guided by *Cooper v. McCormick*, 69 P. 301 (Wyo. 1902). There, the Wyoming Supreme Court held that the vacant-land preference—in an earlier version of the vacant-land leasing statute—was intended to break a tie “evidently . . . only where other things

are equal.” *Cooper*, 398. 69 P. at 303. Otherwise, the Court explained, the preference would mean that “in all cases and under all circumstances where there should be more than one application . . . the application of an [ordinary applicant] should be rejected in favor of a [preferred applicant][.]” *Id.* The Office of State Lands contends that reading of the preference would encourage those with a statutory preference to bid the lowest amount possible frustrating the Office of State Lands’ objective to earn the greatest benefit to the state land trustees—public schools. This Hearing Examiner finds that reasoning to be persuasive.

22. Where a statute is ambiguous, some deference to the interpretation by the agency charged with the execution of the statute should be given unless that agency’s interpretation is clearly erroneous. *Campbell County School Dist. v. Catchpole*, 6 P.3d 1275, 1285 (Wyo. 2000). Here, the State Lands Office’s historical interpretation of Wyoming Statute § 36-5-105(b) (LexisNexis) is the preference applies only if all of the competing bids are otherwise equal. That interpretation is reasonable and not clearly erroneous.

23. The Office of State Lands’ interpretation is consistent with the stated purpose of the Act. Wyoming Statute § 36-5-105(a) (LexisNexis) provides that state lands “be leased in such a manner and to such parties as shall inure to the greatest benefit to the state land trust beneficiaries.” Applying the adjoining lands preference only when there are equal bids encourages higher rental bids from adjoining landowners, which is to the financial benefit of the state land trust beneficiaries. Awarding the lease to a lower bidder, but one with adjoining lands, would not be any benefit the state land trust beneficiaries.

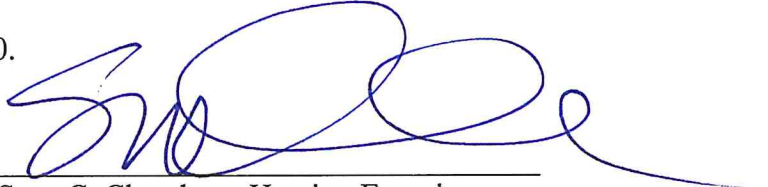
24. Therefore, this Hearing Examiner recommends the Board uphold the Office of State Land’s decision to award Lease 3-8742 to Sunrise was in accordance with law.

VI. ORDER

IT IS THEREFORE RECOMMENDED that:

1. The State Lands Office's Motion for Summary Judgment is **GRANTED** and the award of the lease to Sunrise is upheld.
2. This case is returned to the Board for a final decision.
3. Pursuant to Wyoming Statute § 16-3-109 (LexisNexis) and OAH Rules Chapter 2, Section 27, the parties shall have ten days in which to file exceptions to this Recommended Order with the Board.

DONE this 23 day of January, 2020.



Sean C. Chambers, Hearing Examiner
State of Wyoming
OFFICE OF ADMINISTRATIVE HEARINGS
1800 Carey Avenue, Fifth Floor
Cheyenne, Wyoming 82002-0270
(307) 777-6660

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties by mailing a true and correct copy postage prepaid, on the 23 day of January, 2020, addressed to the following:

Office of State Lands and Investments – (ORIGINAL)
Jason Crowder, Assistant Director – Trust Land Management Division
122 West 25th Street, Third Floor
Cheyenne, Wyoming 82002-0600

Peter C. Nicolaysen – Attorney for Unsuccessful Lease Bidder
P.O. Box 0007
Casper, WY 82602-0007

Sunrise R. Cattle Company, LLC – Successful Lease Bidder
830 Highway 230
Laramie, Wyoming 82070

Megan Pope – Attorney for Office of State Lands and Investments
Senior Assistant Attorney General
2424 Pioneer Avenue, Third Floor
Cheyenne, Wyoming 82002

Bridget Hill – Advising Attorney for the Board of Land Commissioners
Attorney General
2320 Capitol Avenue
Cheyenne, Wyoming 82002



Office of Administrative Hearings